

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 767 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALVANTBHAI @ BALO MANGABHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

GOVERNMENT PLEADER for respondents

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 20/03/96

ORAL JUDGEMENT

By this petition under Art.226 of the Constitution of India, the petitioner has challenged the legality, validity and propriety of the order of detention dated 21.10.95 passed by the Commissioner of Police, Surat City, under the Gujarat Prevention of Anti-Social Activities Act, 1985 ("the PASA" for short) branding him as a boot legger with a view to prevent him from acting in any manner prejudicial to the maintenance

of the public order, in exercise of the powers under sec.3(2) of the PASA Act.

2. The petitioner was served with the grounds of detention and the necessary documents on the basis of which the impugned order of detention was passed.

3. One of the grounds of challenge to the impugned order of detention is that the right of the petitioner to make effective representation has been adversely affected inasmuch as the statements of the witnesses on which reliance is placed to hold that the activities of the detenu is adversely affecting the public order are blank and, therefore, it amounts to non-supply of documents.

4. Sub-sec.(1) of sec.9 of the PASA Act provides that when a person is detained in pursuance of the order of detention, the detaining authority shall as soon as possible but not later than seven days from the date of detention communicate the grounds on which the order has been made and shall afford him earliest opportunity of making representation against the order to the State Government. To make effective representation, it is now well established law that all the documents on which the detaining authority has relied on are required to be supplied to the detenu to make effective representation as contemplated under Art.22(5) of the constitution of India. If some of the documents relied on for passing the order of detention are not supplied, it adversely affects and prejudices the right of the detenu to make an effective representation.

5. In this case, the detaining authority has relied on the statements of certain witnesses and has claimed privilege to disclose their names. One can appreciate that if there are blanks pertaining to the name and address with a view not to disclose his identity in consonance with sub.sec.(2) of sec.9 of the PASA Act. But the statements which are supplied to the detenu are blank in material particulars. In the statement of the first witness no.3, there are as many as 5 blanks. The learned counsel for the petitioner has, therefore, contended that the supply of such documents with blanks as aforesaid amounts to non supply as it does not give full meaning of the statements/documents and, therefore, there is infraction of Art.22(5) of the constitution of India and the order of detention is, therefore, liable to be quashed and set aside.

6. Mr.S.P.Dave, learned counsel for the respondent State has contended that these blanks have been made good

in the grounds of detention. If the blanks are filled up or can be read in from the grounds of detention, there was no reason for the detaining authority not to fill the blanks and supply full and complete documents to the detenu. This apart, there is nothing on record to show that the blanks which are in the statements may be even read from the grounds of detention supplied to the detenu. These arguments, in my view, is advanced only with a view to contend before the court and it does not satisfy the requirement to supply full and complete documents to the detenu. Therefore, the arguments of Mr.Dave cannot be accepted that the statements are not blanks and can be read with the aid and assistance of the grounds of detention.

7. As the petition can be allowed and disposed of on this ground alone, other grounds and the contentions raised by the learned counsel for the petitioner are not considered in this judgment.

8. In the result, this petition is allowed. The impugned order of detention dated 21.10.1995 annexure "A" passed by the Commissioner of Police, Surat City bearing NO. PCB/PASA/77/1995 is hereby quashed and set aside. Writ of mandamus be issued to the respondent no.3 to set the petitioner detenu at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

20/03/1996.

(sd/-S.M.SONI, J.)